

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHIGEO OZAWA

Appeal 2006-2173
Application 09/519, 999
Technology Center, 1700

Decided: November 2, 2006

Before KIMLIN, KRATZ, and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 10-11, 13-18, 20-25, 27, and 29-33, the only claims pending in this application. We have jurisdiction over the

appeal pursuant to 35 U.S.C. § 134.¹

We AFFIRM.

Appellant's invention relates to an accommodation bag in which at least one liquid can be heated either by external sources or by an internal heating element. The claimed accommodation bag further comprises a second inner bag containing therein a substance that is to be mixed with the heated liquid. Representative claim 20, as presented in the Brief, appears below:

20. A container, comprising:

an outer bag;

a first inner bag accommodated in said outer bag and filled with a liquid, said first inner bag being made liquid-impermeable except at least for a first vapor-releasing hole that is positioned in an upper part thereof and closed by a first seal configured to open when a pressure inside said first inner bag reaches a predetermined level by heating said liquid, thereby allowing said heated liquid to escape said first inner bag as vapor; and

a second closed inner bag accommodated in said outer bag and containing therein a substance to be mixed with said vapor, said second inner bag being made liquid permeable at least partially for allowing said liquid, after escaping said first inner bag as vapor, to enter said second inner bag and to heat and be mixed with said substance.

As evidence of unpatentability the Examiner relies upon the following references:

¹ In rendering this decision, we have considered the Appellant's arguments presented in the Briefs filed October 18, 2004 and December 20, 2004 and the Examiner's position presented in the Answer mailed October 20, 2004.

Hoffman	US 3,683,889	Aug. 15, 1972
Ooyama	JP 03-136614	Jun. 11, 1991
Yoshio ²	JP 06-329179	Nov. 29, 1994
Chung	US 5,741,534	Apr. 21, 1998

Claims 31 and 33 stand rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement.

Claims 20, 22-25, and 32 stand rejected under 35 U.S.C. §103(a) as obvious over Ooyama.-

Claims 21 and 33 stand rejected under 35 U.S.C. §103(a) as obvious over Ooyama in view of Hoffman.

Claim 29 stands rejected under 35 U.S.C. §103(a) as obvious over Ooyama, Hoffman and Chung.

Claims 10, 11, 13-15, 18, 30, and 31 stand rejected under 35 U.S.C. §103(a) as obvious over Ooyama and Hoffman.

Claims 16-17 stand rejected under 35 U.S.C. 103(a) as obvious over Ooyama, Hoffman and Yoshio.

Claim 27 stands rejected under 35 U.S.C. §103(a) as obvious over Ooyama, Hoffman, and Chung.

We initially note that Appellant asserts that there are at least six separately patentable groups of claims. Appellant submits that “each group are [sic, is] separately patentable, and thus, do not stand or fall together.” (Br. 3). Appellant has not provided separate arguments directed to the individual claims within the separate groups. Appellant's grouping of the claims appear to be based upon the stated prior art rejections. Consequently,

² The Examiner in the Answer reported the wrong date for this reference.

for each ground of rejection the rejected claims will stand or fall together.
We will select a representative claim for each stated rejection.

Rejection Under 35 U.S.C. §112.

Claims 31 and 33 stand rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement.

The Examiner asserts that the Specification does not disclose "submergence" of a second inner bag in vapor as specified in claims 31 and 33 (Final Rejection 3). Appellant argues:

The plain meaning of the last paragraph of claim 31 is that said internal heating element is configured to generate sufficient heat to cause said liquid to (i) escape said first inner bag as vapor, and (ii) escape said first inner bag in an amount sufficient for submergence of said portion of said second inner bag and the substance contained in said portion of the second inner bag. The former finds solid support in the original specification, e.g., page 4, line 20. The latter finds solid support in the original drawings, e.g., FIGs. 2 and 3. A person of ordinary skill in the art, after looking at FIGs. 2-3 and reading the relevant part of the specification, would at once recognize that the second inner bag is submerged in the heated liquid which has escaped the first inner bag as vapor. The invention of claim 31, as correctly construed above, is clearly supported by the specification as filed. (Br. 7).

An *ipsis verbis* disclosure is not necessary to satisfy the written description requirement of §112. Instead, the disclosure needs only to reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question. *See In re Edwards*, 568 F.2d 1349, 1351-52, 196 U.S.P.Q. 465, 467 (CCPA 1978). The Specification on page 4 as originally filed clearly discloses that the liquid in the first accommodation bag flows outward when heated. The Specification also

discloses that the liquid may escape in the form of vapor. It is our opinion that this disclosure conveys to a person of ordinary skill in the art that Appellant had possession of the invention as presently claimed. Consequently, the Examiner's rejection is reversed.

We now turn to the prior art rejections.

Rejections Under §103 (a).

Upon careful consideration of the positions presented by the Examiner and the Appellant, we agree with the Examiner's stated rejections. Our reasons follow.

Claims 20, 22-25, and 32 stand rejected under 35 U.S.C. §103 (a) as obvious over Ooyama. We select claim 20 as representative of the rejected claims.

The Examiner asserts that Ooyama describes an outer container (bag) that comprises a liquid accommodation bag that is liquid impermeable and a second inner bag that is liquid permeable and comprises a substance to be mixed with vapor (Final Rejection 3-4). The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the liquid accommodation bag with a steam pressure release valve for steaming products in the described second accommodation bag. In this regard, Ooyama suggests a steaming option (p. 14).

Appellant argues that Ooyama does not disclose a steam pressure releasing vent in the liquid accommodation bag and that Ooyama's element (31) is disclosed only to discharge liquid rather than steam (Br. 9). We do not agree with this argument. We agree with the Examiner that Ooyama suggests using a vent the vent for the liquid containing bag that is suitable for releasing vapor (Page 14).

Appellant argues that it would not have been obvious to substitute the partition separating means of Ooyama with a second inner bag, because the partition is a simpler construction (Br. 10). Appellant's argument is not persuasive. Ooyama discloses that the substance to be mixed with the liquid from the first inner bag can be contained in a separate bag (13) or separated by a partition (68).

Appellant argues that Ooyama does not include an enabling disclosure for arranging the liquid accommodation bag, below the food components (Br. 10). We do not agree. Ooyama discloses placing the liquid containing accommodation bag beneath the food product. (*See* page 14).

Appellant argues that Ooyama fails to teach or suggest placing the vapor-releasing hole in the upper part of the liquid accommodation bag, and that a person of ordinary skill in the art would recognize that the vent should be formed at the bottom of the liquid containing bag (Br. 11). Appellant's argument is not persuasive. Ooyama suggests that the liquid accommodation bag can be located within the outer bag/container to provide steam for cooking the food. A person of ordinary skill in the art would have sufficient skill to choose the appropriate location for the vapor releasing vent corresponding to the claimed upper bag location. Appellants have not substantiated their arguments with respect to the alleged unobviousness of the steam vent location with any persuasive evidence.

Claims 21 and 33 stand rejected under 35 U.S.C. §103 (a) as obvious over Ooyama and Hoffman. We select claim 21 as a representative of the rejected claims.

The Examiner asserts that Hoffman teaches that it was known to provide a heating element in the liquid holding portion of a container for the

purpose of heating the liquid to hydrate a separate permeable compartment. The Examiner concludes that it would have been obvious to include an internal heating element and the liquid accommodation bag of Ooyama (Final Rejection 6). Appellant does not dispute that Hoffman teaches an internal heating element for heating a liquid as suggested by the Examiner. (See Brief, pages 13-14). Appellant's arguments regarding Ooyama's steaming environment are not persuasive of any reversible error in the Examiner's proposed introduction of a heating element in the liquid accommodation bag of Ooyama based on the combined teachings of the applied references³

Claim 29 stands rejected under 35 U.S.C. §103 (a) as obvious over Ooyama, Hoffman, and Chung. The Examiner relies on the Chung reference for teaching the use of additional food containing accommodation bags. Appellant argues that Chung is not combinable with the steaming embodiment of Ooyama because the additional bags are located above the liquid containing bag and cannot be located around the first liquid accommodation bag (Br. 14). Appellant's purported distinction regarding the location of the secondary bags is not persuasive. Ooyama discloses that the food item to be cooked can be separated from the liquid containing bag through the use of a partition or a separate bag. The inclusion of additional secondary bags containing various items which need to be cooked would

³ It is noted that the vapor that is released from the liquid accommodation bag will be trapped inside the outer bag (10). This vapor will build inside the container until sufficient pressure is obtained to cause the steam-pressure-releasing vent (21) to open. Thus, it appears that the vapor released from the liquid containing accommodation bag would surround and submerge at least a portion of the containers inside the outer bag.

have been obvious to a person of ordinary skill in the art, as suggested by Chung. The location of the secondary bags "around" the liquid containing bag called for in appealed claim 29 does not preclude the location of the bags above the liquid containing bag. In other words, the secondary bags that are located above the liquid containing bag of Ooyama would still be considered to be "around" the liquid containing bag.

Claims 10, 11, 13-15, 18, 30, and 31 stand rejected under 35 U.S.C. §103(a) as obvious over Ooyama and Hoffman. We select claim 10 as representative of the rejected claims.

As indicated above in the discussion of claim 21, the Examiner asserts that Hoffman teaches that it was known to provide a heating element in the liquid holding portion of a container for the purpose of heating the liquid to hydrate a separate permeable compartment. Appellant argues that the Hoffman reference fails to disclose that the heating element is installed in the liquid containing bag (Br. 15). Appellant recognizes that Hoffman discloses that interior chamber 23 faces the liquid to be heated. However, Appellant asserts that chamber 24 is directed to the outside of the container; therefore the heating element is not part of the interior bag. This argument is not persuasive because a portion of the heating element 23 disclosed by Hoffman is attached to part of the liquid containing portion of the container as described by the Examiner. Thus, we are in agreement with the Examiner that it would have been obvious to include an internal heating element in the liquid containing portion of Ooyama.

Claims 16-17 stand rejected under 35 U.S.C. 103(a) as obvious over Ooyama, Hoffman and Yoshio. Appellant has not specifically challenged the Examiner's motivation for combining the teachings of Yoshio with

Ooyama and Hoffman. Rather, Appellant asserts that the subject matter of claims 16-17 is patentable for the reasons advanced with respect to claim 10. The Examiner has presented factual determinations regarding the suitability of adding the teachings of Yoshio with Ooyama and Hoffman. (*See* Final Rejection 12-13). Thus, for the reasons presented above regarding claim 10 and the reasons presented by the Examiner, we will uphold the rejection of claims 16-17.

Claim 27 stands rejected under 35 U.S.C. §103(a) as obvious over Ooyama, Hoffman, and Chung. Appellant has not specifically challenged the Examiner's motivation for combining the teachings of Chung with Ooyama and Hoffman. Rather, Appellant asserts that the subject matter of claim 27 is patentable for the reasons advanced with respect to claims 10 and 29 (Br. 17). The Examiner has presented factual determinations regarding the suitability of adding the teachings Chung with Ooyama and Hoffman. (*See* Final Rejection 13-14). Thus, for the reasons presented above regarding claims 10 and 29 and the reasons presented by the Examiner, we will uphold the rejection of claim 27.

CONCLUSION

The rejection of claims 31 and 33 under 35 U.S.C. §112, first paragraph is reversed. The prior art rejections of claims 10-11, 13-18, 20-25, 27, and 29-33 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR §1.136 (a)(1)(iv)(2004).

AFFIRMED

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